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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,480	04/19/2004	Cassandre Michelle Fecht	DC4998CIP1	3304
7590	09/17/2008		EXAMINER	
Dow Corning Corporation Intellectual Property Dept. - CO1232 P.O. Box 994 Midland, MI 48686-0994			ROBERTS, LEZAH	
			ART UNIT	PAPER NUMBER
			1612	
			MAIL DATE	DELIVERY MODE
			09/17/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/827,480	FECHT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	LEZAH W. ROBERTS	1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 June 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,2,4-7,9 and 11-14 is/are pending in the application.  
 4a) Of the above claim(s) 13 and 14 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,2,4-7,9,11 and 12 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 13 June 2008.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

This Office Action is in response to the Amendment filed June 13, 2008. All previous rejections have been withdrawn unless stated below.

### ***Information Disclosure Statement***

It is noted only Abstracts of the Japanese patents listed on the IDS were submitted.

### ***Claims***

#### **Claim Rejections - 35 USC § 102 – Anticipation (New Rejections)**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1) Claims 1, 2, 5-7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Hiwatari et al. (JP 2000336018).

Hiwatari et al. disclose hair compositions comprising the hydrocarbyl functional organopolysiloxane compounds of the instant claims (see structures 11 and 12, and paragraphs 0032-0035 of the enclosed translation). The compositions may also comprise color (paragraph 0062 of enclosed translation), encompassing claim 9. The

reference anticipates the instant claims insofar as it discloses a composition comprising a hydrocarbyl functional organopolysiloxane compound of the instants and at least one cosmetic ingredient.

2) Claims 1, 2, 5, 6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Candau (US 6,033,648).

Candau discloses tanning compositions comprising iron oxide nano-pigments (see Abstract), encompassing claims 9 and 11. The compositions also comprise a silicone emulsifier encompassing the hydrocarbyl functional organopolysiloxane compounds of the instant claims (col. 6, lines 39-62). These are preferred emulsifiers. The compositions are cosmetics and additionally comprise conventional cosmetic and/or dermatological adjuvants (col. 10, lines 49-59). The reference anticipates the instant claims insofar as it discloses a composition comprising a hydrocarbyl functional organopolysiloxane compound of the instants and at least one cosmetic ingredient.

3) Claims 1, 2, 5-7, 9, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Kumar et al. (US 5,468,477).

Kumar et al. disclose cosmetic compositions comprising silicone polymers. The compositions may be formulated into lipsticks (col. 17, lines 30-45). The compositions comprise surface actives which include the hydrocarbyl functional organopolysiloxane compounds encompassed by the instant claims (col. 23, lines 5-50). The compositions

also comprise pigments (col. 19, lines 45-52), encompassing claim 9. The reference anticipates the instant claims insofar as it discloses a composition comprising a hydrocarbyl functional organopolysiloxane compound of the instants and at least one cosmetic ingredient.

Claims 1, 2, 5-7, 9, 11 and 12 are rejected.

No claims allowed.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEZAH W. ROBERTS whose telephone number is (571)272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick F. Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lezah W Roberts/  
Examiner, Art Unit 1612

/Frederick Krass/  
Supervisory Patent Examiner, Art Unit 1612